IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

RP.No. 818 of 2007()

AGAINST THE ORDER IN AR.4/2006 Dated 28/06/2006

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REVIEW PETITIONERS/OPPOSITE PARTIES:

1.THE KERALA WATER AUTHORITY,
JALA BHAVAN, TRIVANDRUM REP.BY ITS
MANAGING DIRECTOR.

2. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY,
P.H.CIRCLE, KOTTAYAM.

BY ADV. SRI.J.KRISHNA KUMAR, SC, KWA

RESPONDENT/APPLICANT:

P.T.CHACKO, SANTHA BHAVAN,
KALANJOOR P.O., PATHANAMTHITTA DISTRICT.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 20/09/2007,

THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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R.P.No.818 of 2007 in A.R.No.4 of 2006

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Dated this the 20th day of September, 2007.

O R D E R

"C.R."

1. Heard.

2. By the order sought to be reviewed, issued on 28th June, 2006, it was noticed that there is an arbitration agreement between the parties and there are disputes to be resolved. The named arbitrator had not entered on reference. Accordingly, following the decisions of the Apex Court in **Datar Switchgears v. Tata Finance Ltd** [2000 (8) SCC 151] and **Punj Lloyd v. Petronet MHB Ltd** [2006 (2) SCC 638], an arbitrator was appointed

allowing the arbitration request.

3. This application for review is filed contending that the arbitration clause in the agreement between the parties has no bearing because, it is part of local competitive bidding specifications and that the arbitration clause in such an agreement no more survives in view of the Kerala Revocation of Arbitration Clauses and Reopening of Awards Act, 1998, for short, the “Act”, which has come into force on 14th November, 1997, by virtue of Section 1(3) of that Act. The learned counsel for the respondent in the review petition states that the operation of the Act has been stayed by this Court in a bunch of writ petitions challenging that enactment.

4. To decide the issue in hand, the interpretation of the Act would suffice. By virtue of Section 3(1)(i), the arbitration clauses in every agreement shall stand cancelled. The term 'agreement' for the purpose of the Act, going by Section 2

(1)(a), means an agreement executed in terms of the local competitive bidding specifications for various works of the Government of Kerala. Therefore, the provisions of the Act apply only to agreements for various works of the Government of Kerala and only when it is in relation to the various works of the Government of Kerala, would the question arise as to whether that agreement is one in terms of local competitive bidding specifications. Such issue does not arise in this case for the simple reason that the review petitioner, Kerala Water Authority, is an authority constituted under the Water Supply and Sewerage Act, 1986 (Kerala) and is not part of the Government of Kerala. It is an independent statutory body of an autonomous nature. If any reference to its pedigree and history is required, immediate reference can be made to paragraph 2 of the often quoted decision of the Apex Court in **Jacob v. Kerala Water Authority** [1990 (2) KLT 673]. Hence, the review petitioner, Kerala Water Authority, is not entitled to contend that the arbitration agreement between the parties

to this case has been nullified by the provisions of the aforesaid Act.

In the result, the review petition fails. The same is accordingly dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN, JUDGE.

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